

## **Assembly Bill No. 1143**

### **CHAPTER 325**

An act to amend Sections 402.5, 23038, 23304.1, and 23305.5 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 15, 2014. Filed with  
Secretary of State September 15, 2014.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 1143, Skinner. Tax administration: suspension or forfeiture: limited liability companies: check the box regulations: property tax assessment.

(1) Existing property tax law requires, when valuing property by comparison with sales of other properties, that to be considered comparable the sales be sufficiently near in time to the valuation date, as defined, and that the properties sold be located sufficiently near, and be sufficiently alike, the property being valued, as specified.

This bill would revise that definition.

(2) Existing federal law imposes a tax, for each taxable year, on the taxable income of every corporation, as defined, and includes an association within the definition of a corporation. Existing federal law permits specified business entities to elect their classification for federal income tax purposes as an association, a partnership, or disregarded as an entity separate from its owner and provides for a default classification.

Existing state law, the Corporation Tax Law, generally imposes a tax on every corporation, as defined, for each taxable year, according to or measured by its net income. Existing law requires the classification of a business entity, for state corporate income tax purposes, to be determined pursuant to the regulations of the Franchise Tax Board, consistent with federal regulations as in effect January 1, 1997, that classify a business entity as a partnership or an association taxable as a corporation or disregard the separate existence of certain business entities for tax purposes. Existing law requires that the state classification of an eligible business entity to be the same as the federal classification of that entity for tax purposes.

This bill would instead require that the regulations issued by the Franchise Tax Board, related to the classification of a business entity, be consistent with federal regulations as in effect May 1, 2014.

(3) Existing law provides that specified limited liability companies and corporations that are suspended or forfeited for failure to file a tax return or for failure to pay delinquent taxes, penalties, or interest are subject to specified consequences, including contract voidability.

This bill would subject foreign nonregistered limited liability companies to contract voidability if the foreign nonregistered limited liability company

is subject to suspension or forfeiture for failure to file a tax return or for failure to pay delinquent taxes, penalties, or interest.

This bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. Section 402.5 of the Revenue and Taxation Code is amended to read:

402.5. When valuing property by comparison with sales of other properties, in order to be considered comparable, the sales shall be sufficiently near in time to the valuation date, and the properties sold shall be located sufficiently near the property being valued, and shall be sufficiently alike in respect to character, size, situation, usability, zoning, or other legal restriction as to use unless rebutted pursuant to Section 402.1, to make it clear that the properties sold and the properties being valued are comparable in value and that the cash equivalent price realized for the properties sold may fairly be considered as shedding light on the value of the property being valued. “Near in time to the valuation date” does not include any sale more than 90 days after the valuation date.

SEC. 2. Section 23038 of the Revenue and Taxation Code is amended to read:

23038. (a) “Corporation” includes every corporation except corporations expressly exempt from the tax by this part or the Constitution of this state.

(b) (1) For the purposes of the tax imposed under Chapter 3 (commencing with Section 23501), “corporation” also includes associations (including nonprofit associations that perform services, borrow money or own property), other than banking associations, and Massachusetts or business trusts. For the purposes of this part, a Massachusetts or business trust includes every business organization consisting essentially of an arrangement whereby property is conveyed to one, or more than one, trustee for purposes other than the mere conservation of assets, collecting and disbursing of fixed or periodic income, or the securing of an obligation. This paragraph shall apply for income or taxable years beginning before January 1, 1997.

(2) (A) For the purposes of the tax imposed under Chapter 3 (commencing with Section 23501), “corporation” also includes associations (other than banking associations but including nonprofit associations that perform services, borrow money or own property), business trusts, and other business entities classified as associations.

(B) (i) For purposes of the preceding subparagraph, the classification of a business entity (including a business trust) as an association taxable as a corporation (under Chapter 3 (commencing with Section 23501)) shall be determined under regulations of the Franchise Tax Board, that shall be consistent with federal regulations as in effect May 1, 2014, that classify a business entity as a partnership or an association taxable as a corporation

or disregard the separate existence of certain business entities for tax purposes.

(ii) The classification of an eligible business entity as a partnership or an association taxable as a corporation for purposes of this part, Part 10 (commencing with Section 17001), and Part 10.2 (commencing with Section 18401) shall be the same as the classification of the entity for federal tax purposes.

(iii) If the separate existence of an eligible business entity is disregarded for federal tax purposes, the separate existence of that business entity shall be disregarded for purposes of this part, Part 10 (commencing with Section 17001), and Part 10.2 (commencing with Section 18401), other than Section 17941 (relating to the tax of a limited liability company), Section 17942 (relating to the fee of a limited liability company), Section 18633.5 (relating to the return of a limited liability company), and Sections 17039 and 23036 (relating to tax credits).

(C) Notwithstanding clauses (ii) and (iii) of subparagraph (B), an eligible business entity that, for any income year beginning within the 60-month period preceding January 1, 1997, was properly classified as an association taxable as a corporation for California tax purposes shall continue to be an association taxable as a corporation until it elects, under regulations issued pursuant to subparagraph (B), to be classified or disregarded the same as the entity is classified or disregarded for federal tax purposes. The preceding sentence shall not apply to any entity that, during the 60-month period preceding January 1, 1997, was not doing business in this state, did not derive income from sources within this state, and had no owner who was a resident of this state.

(D) This paragraph shall apply for income or taxable years beginning on and after January 1, 1997.

(c) In addition to the above, for purposes of the tax imposed under Chapter 2 (commencing with Section 23101) for the purpose of exercising its franchise within this state, “corporation” also includes any limited liability company that is classified as an association for California tax purposes.

(d) “Corporation” includes any “corporation” operated by any receiver, liquidator, referee, trustee or other officers or agents appointed by any court, or an assignee for the benefit of creditors.

“Corporation” includes any professional corporation incorporated pursuant to Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code.

(e) Notwithstanding the above, “corporation” also includes a trust organized and operated exclusively for purposes contained in Section 23701d.

(f) No provision of the act adding this subdivision shall be construed to alter existing law with respect to the civil liability of a limited liability company or its members.

SEC. 3. Section 23304.1 of the Revenue and Taxation Code is amended to read:

23304.1. (a) Every contract made in this state by a taxpayer during the time that the taxpayer's powers, rights, and privileges are suspended or forfeited pursuant to Section 23301, 23301.5, or 23775 shall, subject to Section 23304.5, be voidable at the request of any party to the contract other than the taxpayer.

(b) If a foreign taxpayer that neither is qualified to do business nor has an account number from the Franchise Tax Board, fails to file a tax return required under this part, any contract made in this state by that taxpayer during the applicable period specified in subdivision (c) shall, subject to Section 23304.5, be voidable at the request of any party to the contract other than the taxpayer.

(c) (1) For purposes of subdivision (b), the applicable period shall be the period beginning on January 1, 1991, or the first day of the taxable year for which the taxpayer has failed to file a return, whichever is later, and ending on the earlier of the date the taxpayer qualified to do business in this state or the date the taxpayer obtained an account number from the Franchise Tax Board.

(2) With regard to a limited liability company, the applicable period shall be the period beginning on January 1, 2014, or the first day of the taxable year for which the taxpayer has failed to file a return, whichever is later, and ending on the earlier of the date the taxpayer qualified to do business in this state or on the date the taxpayer obtained an account number from the Franchise Tax Board.

(d) If a taxpayer fails to file a tax return required under this part, to pay any tax or other amount owing to the Franchise Tax Board under this part or to file any statement or return required under Section 23772 or 23774, within 60 days after the Franchise Tax Board mails a written demand therefor, any contract made in this state by the taxpayer during the period beginning at the end of the 60-day demand period and ending on the date relief is granted under Section 23305.1, or the date the taxpayer qualifies to do business in this state, whichever is earlier, shall be voidable at the request of any party to the contract other than the taxpayer. This subdivision shall apply only to a taxpayer if the taxpayer has an account number from the Franchise Tax Board, but has not qualified to do business under the Corporations Code. In the case of a taxpayer that has not complied with the 60-day demand, the taxpayer's name, Franchise Tax Board account number, date of the demand, date of the first day after the end of the 60-day demand period, and the fact that the taxpayer did not within that period pay the tax or other amount or file the statement or return, as the case may be, shall be a matter of public record.

SEC. 4. Section 23305.5 of the Revenue and Taxation Code is amended to read:

23305.5. For purposes of this article:

(a) "Taxpayer" means either:

(1) A corporation subject to tax under this chapter.

(2) A business entity organized under a statute or law, under a state or a federally recognized Indian tribe, under another jurisdiction, if the statute

or law describes or refers to the entity as a limited liability company or if regulations of the Franchise Tax Board identify a business entity organized under the laws of a foreign country as a limited liability company.

(b) With regard to a limited liability company:

(1) “Articles of incorporation” shall include a limited liability company’s articles of organization.

(2) “Tax” shall include the tax and fee imposed by Sections 17941 and 17942, or former Sections 23091 and 23092, respectively.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that all entities doing business in California are treated equally under the Revenue and Taxation Code and to ensure that a necessary federal law reference for the classification of a business entity for state corporate income tax purposes is updated as soon as possible, it is necessary that this act take effect immediately.